

# SIXTY-FIRST DAY

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MONDAY, APRIL 28, 1997

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## PROCEEDINGS

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

The President announced that a quorum of the Senate was present.

Rabbi Paul Joseph, Temple Beth El, Corpus Christi, offered the invocation as follows:

O holy God, beyond compare, as we begin the deliberations of this day's legislative session, we would draw near to You, that we might be imbued with knowledge, insight, and understanding. We ask Your blessings upon this assembly and all who hold positions of leadership and responsibility in the direction of our state's affairs. Be especially mindful of our Governor, George W. Bush; our Lieutenant Governor and President of the Senate, Bob Bullock; and our own Senator, Carlos Truan. May wisdom enrich their judgments and strength of spirit sustain their vigor in the daily pursuit of social justice, equality of opportunity, and civic concord for all our citizens. May each and every representative of this great state see clearly that the well-being of all is in their hands. Let neither special interests nor selfish ambition diminish the will to serve the commonweal. Teach us to uphold the good name of this noble institution through our right conduct, both within these walls and in the communities we serve. Together with our fellow citizens, bestow upon us abundant life, health, peace, and contentment, in the knowledge that every commitment and even every controversy that is truly in Your service will in the end meet with success.

May the graciousness of God eternal be upon us and upon all our works, establish our labors with enduring effect, for the blessing of all and the hurt of none, for the good of all and the woe of none, for the life of all and the harm of none, and together let us say, "Amen."

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday, was dispensed with and the Journal was approved.

**CO-AUTHOR OF SENATE BILL 667**

On motion of Senator Barrientos and by unanimous consent, Senator West will be shown as Co-author of **SB 667**.

**CO-AUTHOR OF SENATE BILL 1880**

On motion of Senator Barrientos and by unanimous consent, Senator West will be shown as Co-author of **SB 1880**.

**CAPITOL PHYSICIAN**

The President recognized Senator Zaffirini, who presented Dr. Lester Lang of Laredo as the "Doctor for the Day."

Dr. Lang, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was made welcome by the Senate.

(Senator Truan in Chair)

**SENATE BILL 163 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 163** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Floor Amendment No. 1**

Amend **SB 163** in SECTION 1 of the bill, proposed Section 4, Article 21.53G, Insurance Code (committee printing, page 5, line 3, between "practitioner" and "who", by inserting "or provider".

The amendment was read.

On motion of Senator Zaffirini, the Senate concurred in the House amendment to **SB 163** by a viva voce vote.

**SENATE BILL 190 WITH HOUSE AMENDMENTS**

Senator Zaffirini called **SB 190** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 190** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED****AN ACT**

relating to the regulation of nursing homes and similar facilities; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. REGULATION OF  
NURSING HOMES AND SIMILAR FACILITIES

SECTION 1.01. Section 242.001, Health and Safety Code, is amended to read as follows:

Sec. 242.001. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) It is the goal of this chapter to ensure that institutions in this state deliver the highest possible quality of care. This chapter, and the rules and standards adopted under this chapter, establish minimum acceptable levels of care. A violation of a minimum acceptable level of care established under this chapter or a rule or standard adopted under this chapter is forbidden by law. Each institution licensed under this chapter shall, at a minimum, provide quality care in accordance with this chapter and the rules and standards. Components of quality of care addressed by these rules and standards include:

- (1) quality of life;
- (2) access to care;
- (3) continuity of care;
- (4) comprehensiveness of care;
- (5) coordination of services;
- (6) humaneness of treatment;
- (7) conservatism in intervention;
- (8) safety of the environment;
- (9) professionalism of caregivers; and
- (10) participation in useful studies.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program. The rules and standards may not be less stringent than the Medicaid certification standards imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100-203.

(c) The rules and standards adopted under this chapter apply to each licensed institution and are established to protect a class of persons to which residents of institutions belong. The rules and standards are not only intended for use in state surveys of institutions and any investigation and enforcement action but are also designed to:

- (1) protect consumers by establishing minimum levels of acceptable care; and
- (2) establish criteria for consumers and providers to assess the quality of care provided in an institution.

(d) The legislature finds that the construction, maintenance, and operation of institutions shall be regulated in a manner that protects the residents of the institutions by:

- (1) providing the highest possible quality of care;
- (2) strictly monitoring all factors relating to the health, safety, welfare, and dignity of each resident;
- (3) imposing prompt and effective penalties for noncompliance with licensing standards; and
- (4) providing the public with information concerning the operation of institutions in this state.

(e) It is the legislature's intent that this chapter accomplish the goals listed by Subsection (d).

(f) This chapter shall be construed broadly to accomplish the purposes set forth in this section. ~~[The purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards for the treatment of residents of institutions and the establishment, construction, maintenance, and operation of institutions that, in the light of advancing knowledge, will promote safe and adequate treatment of residents.]~~

SECTION 1.02. Section 242.002, Health and Safety Code, is amended to read as follows:

Sec. 242.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Human Services.

(2) "Commissioner" means the commissioner of human services.

(3) "Controlling person" means a person who controls an institution or other person as described by Section 242.0021.

(4) "Department" means the Texas Department of Human Services.

(5) [(3)] "Elderly person" means an individual who is 65 years of age or older.

(6) "Facility" means an institution.

(7) [(4)] "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.

(8) "Home" means an institution.

(9) [(5)] "Hospital" has the meaning assigned by Chapter 241 (Texas Hospital Licensing Law).

(10) [(6)] "Institution" means:

(A) an establishment that:

(i) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and

(ii) provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or other services that meet some need beyond the basic provision of food, shelter, and laundry; or

(B) a foster care type residential facility that provides room and board to fewer than five persons who:

(i) are not related within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the proprietor; and

(ii) because of their physical or mental limitation, or both, require a level of care and services suitable to their needs that contributes to their health, comfort, and welfare.

(11) [(7)] "Person" means an individual, firm, partnership, corporation, association, [or] joint stock company, limited partnership, limited liability company, or any other legal entity and includes a legal successor of those entities.

(12) [(8)] "Resident" means an individual, including a patient, who resides in an institution.

~~[(9) "Commissioner" means the commissioner of human services.]~~

SECTION 1.03. Subchapter A, Chapter 242, Health and Safety Code, is amended by adding Section 242.0021 to read as follows:

Sec. 242.0021. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an institution or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an institution;

(2) any person who is a controlling person of a management company or other business entity that operates an institution or that contracts with another person for the operation of an institution; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an institution, is in a position of actual control or authority with respect to the institution, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(c) A controlling person described by Subsection (b)(3) does not include a person, such as a lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of an institution.

SECTION 1.04. Section 242.005, Health and Safety Code, is amended to read as follows:

Sec. 242.005. PERFORMANCE REPORTS ~~[ANNUAL REPORT]~~.

(a) The department and the attorney general each shall prepare annually a full report of the operation and administration of their respective responsibilities under this chapter, including recommendations and suggestions considered ~~[it considers]~~ advisable.

(b) The Legislative Budget Board and the state auditor shall jointly prescribe the form and content of reports required under this section.

(c) The department and the attorney general shall submit the required reports ~~[report]~~ to the governor and the legislature not later than October 1 of each year.

SECTION 1.05. Subchapter A, Chapter 242, Health and Safety Code, is amended by adding Sections 242.015 and 242.016 to read as follows:

Sec. 242.015. LICENSED ADMINISTRATOR. (a) Each institution must have a licensed nursing facility administrator.

(b) The administrator shall:

(1) manage the institution;

(2) be responsible for:

(A) delivery of quality care to all residents; and

(B) implementation of the policies and procedures of the institution; and

(3) work at least 40 hours per week on administrative duties.

Sec. 242.016. FEES AND PENALTIES. Except as expressly provided by this chapter, a fee or penalty collected by or on behalf of the department under

this chapter must be deposited to the credit of the general revenue fund and may be appropriated only to the department to administer and enforce this chapter.

SECTION 1.06. Section 242.032, Health and Safety Code, is amended to read as follows:

Sec. 242.032. LICENSE OR RENEWAL APPLICATION. (a) An application for a license or renewal of a license is made to the department on a form provided by the department and must be accompanied by the license fee.

(b) The application must contain information that the department requires.

(c) The applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with:

(1) minimum standards of medical care, nursing care, and financial condition; and

(2) any other applicable state or federal standard.

(d) The department shall consider the background and qualifications of:

(1) the applicant or license holder;

(2) a partner, officer, director, or managing employee of the applicant or license holder;

(3) a person who owns or who controls the owner of the physical plant of a facility in which the institution operates or is to operate; and

(4) a controlling person with respect to the institution for which a license or license renewal is requested.

(e) In making the evaluation required by Subsection (d), the department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution at any time during the 10-year period preceding the date on which the application is made. The department by rule shall determine what constitutes a satisfactory compliance history.

(f) The department may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time during the 10-year period preceding the date on which the application is made[; which may include affirmative evidence of ability to comply with the standards and rules adopted under this chapter].

SECTION 1.07. Section 242.033(a), Health and Safety Code, is amended to read as follows:

(a) After receiving an application for a license, the department may ~~shall~~ issue the license if, after inspection and investigation, it finds that the applicant or license holder, and any other person described by Section 242.032(d), [and facilities] meet the requirements established under this chapter.

SECTION 1.08. Section 242.034, Health and Safety Code, is amended to read as follows:

Sec. 242.034. LICENSE FEES. (a) The board may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed \$250 ~~[\$150]~~ plus:

(1) \$10 ~~[\$5]~~ for each unit of capacity or bed space for which a license is sought; and

(2) a background examination fee imposed under Subsection (c).

(b) An additional license fee may be charged as provided by Section 242.097.

(c) The board may establish a background examination fee in an amount necessary to defray the department's expenses in administering its duties under Sections 242.032(d), (e), and (f).

(d) ~~[(b)]~~ The license fee must be paid with each application for an initial license, a renewal license, or a change of ownership license.

(e) ~~[(c)]~~ The state is not required to pay the license fee.

(f) ~~[(d)]~~ An approved increase in bed space is subject to an additional fee.

(g) ~~[(e)] Except as provided by Section 242.097, all license fees collected shall be deposited in the state treasury to the credit of the department and may be appropriated to the department to administer and enforce this chapter.~~

~~[(f)]~~ The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the Texas Department of Human Services under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.

SECTION 1.09. Section 242.037, Health and Safety Code, as amended by Chapters 583 and 1049, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 242.037. RULES; MINIMUM STANDARDS. (a) The department shall make and enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights. These rules and minimum standards are expressly created to protect a class of persons to which residents of institutions belong.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program.

(c) The rules and standards adopted by the department may not be less stringent than the Medicaid certification standards and regulations imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100-203.

(d) In addition to standards or rules required by other provisions of this chapter, the [The] board shall [may] adopt, publish, and enforce minimum standards relating to:

(1) the construction of an institution, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) the regulation of the number and qualification of all personnel, including management and nursing personnel, responsible for any part of the care given to the residents;

(3) requirements for in-service education of all employees who have any contact with the residents;

(4) training on the care of persons with Alzheimer's disease and related disorders for employees who work with those persons;

(5) sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(6) the dietary needs of each resident according to good nutritional practice or the recommendations of the physician attending the resident;

(7) equipment essential to the residents' health and welfare; [and]

(8) the use and administration of medication in conformity with applicable law and rules;

(9) care and treatment of residents and any other matter related to resident health, safety, and welfare;

(10) licensure of institutions; and

(11) implementation of this chapter.

(e) [(b)] The board shall adopt, publish, and enforce minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents in [as an employee of] an institution and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by board rule, on a schedule determined by board rule.

(f) To administer the Provider Certification Survey provided for by federal law and regulation, the department must identify each area of care that is subject to both state licensing requirements and federal certification requirements. For each area of care that is subject to the same standard under both federal certification and state licensing requirements, an institution that is in compliance with the certification standard is considered to be in compliance with the same state licensing requirement.

(g) The board by rule shall adopt a system for prioritizing investigation of and action on complaints relating to institutions.

~~[(b) Notwithstanding Section 222.0255(b), an institution that is certified as being in compliance with each standard of participation in the state Medicaid program that relates to the same subject matter as a minimum standard established under Subsection (a) is not required to satisfy the minimum standard established under that subsection.]~~

SECTION 1.10. Section 242.042, Health and Safety Code, is amended to read as follows:

Sec. 242.042. POSTING. (a) Each institution shall prominently and conspicuously post for display in a public area of the institution that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;



(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;

(3) a notice in a form prescribed by the department stating that inspection and related reports are available at the institution for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the institution; ~~and~~

(4) a concise summary of the most recent inspection report relating to the institution;

~~(5) notice that the department can provide summary reports relating to the quality of care, recent investigations, litigation, and other aspects of the operation of the institution;~~

~~(6) notice that the Texas Board of Nursing Facility Administrators can provide information about the nursing facility administrator;~~

~~(7) any notice required to be posted under Section 242.073(c); and~~

~~(8) notice that informational materials relating to the compliance history of the institution are available for inspection at a location in the institution specified by the sign.~~

~~(b) The notice required by Subsection (a)(8) must also be posted at each door providing ingress to and egress from the institution.~~

~~(c) The informational materials required to be maintained for public inspection by an institution under Subsection (a)(8) must be maintained in a well-lighted accessible location and must include:~~

~~(1) any information required to be included under Section 242.504; and~~

~~(2) a statement of the institution's record of compliance with this chapter and the rules and standards adopted under this chapter that is updated not less frequently than monthly and that reflects the record of compliance during the period beginning one year before the date the statement is last updated, in the form required by the department.~~

SECTION 1.11. Section 242.061, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, ~~the [or] license holder, or any other person described by Section 242.032(d) has:~~

~~(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner;~~

~~(2) committed any act described by Sections 242.066(a)(2)-(6); or~~

~~(3) otherwise [substantially] failed to comply with the requirements established under this chapter.~~

~~(c) The department may deny, suspend, or revoke the license of an institution if any person described by Section 242.032(d) has been excluded from holding a license under Section 242.0615.~~

SECTION 1.12. Subchapter C, Chapter 242, Health and Safety Code, is amended by adding Section 242.0615 to read as follows:

Sec. 242.0615. EXCLUSION. (a) The department, after providing notice and opportunity for a hearing, may exclude a person from eligibility for

a license under this chapter if the person or any person described by Section 242.032(d) has substantially failed to comply with this chapter and the rules adopted under this chapter. The authority granted by this subsection is in addition to the authority to deny issuance of a license under Section 242.061(a).

(b) Exclusion of a person under this section must extend for a period of at least two years, but may not exceed a period of 10 years.

SECTION 1.13. Sections 242.063(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The department may petition a district court for:

(1) a temporary restraining order to restrain a person from [continuing] a violation or threatened violation of the standards imposed under [prescribed by] this chapter or any other law affecting residents if the department reasonably believes [finds] that the violation or threatened violation creates an immediate threat to the health and safety of [the institution's] residents; and

(2) an injunction to restrain a person from continuing a violation of the standards imposed under this chapter or by any other law affecting residents if the department reasonably believes that the violation causes a threat to the health and safety of residents.

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from violating [continuing a violation of] the standards or licensing requirements prescribed by this chapter;

(2) restrain or prevent the establishment, conduct, management, or operation of an institution without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating or threatening to violate the standards or licensing requirements prescribed by this chapter.

(d) Notwithstanding Chapter 15, Civil Practice and Remedies Code, or Section 65.023, Civil Practice and Remedies Code, a [A] suit for a temporary restraining order or other injunctive relief may [must] be brought in Travis County or in the county in which the alleged violation occurs.

SECTION 1.14. Section 242.065, Health and Safety Code, is amended to read as follows:

Sec. 242.065. CIVIL PENALTY. (a) A person who violates or causes a violation of this chapter, [or] a rule adopted under this chapter, or any requirement for participation in the state Medicaid program that is applicable to an institution that is licensed under this chapter is liable for a civil penalty of not less than \$2,000 [\$100] or more than \$15,000 [\$10,000] for each act of violation if the department determines the violation threatens the health and safety of a resident.

(b) In determining the amount of a penalty to be awarded under this section, the trier of fact shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard created by the violation to the health or safety of a resident;

(2) the history of violations committed by the person or the person's affiliate, employee, or controlling person;

- (3) the amount necessary to deter future violations;
- (4) the efforts made to correct the violation;
- (5) any misrepresentation made to the department or to another person regarding:
  - (A) the quality of services rendered or to be rendered to residents;
  - (B) the compliance history of the institution or any institutions owned or controlled by an owner or controlling person of the institution; or
  - (C) the identity of an owner or controlling person of the institution;
- (6) the culpability of the individual who committed the violation; and
- (7) any other matter that should, as a matter of justice or equity, be considered.
- (c) Each day of a continuing violation and each resident who suffers directly because of the violation constitute [constitutes] a separate ground for recovery.
- (d) In this section, "affiliate" means:
  - (1) with respect to a partnership other than a limited partnership, each partner of the partnership;
  - (2) with respect to a corporation:
    - (A) an officer;
    - (B) a director;
    - (C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
    - (D) a controlling individual;
  - (3) with respect to an individual:
    - (A) a member of the individual's immediate family;
    - (B) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and
    - (C) each corporation or other business entity in which the individual or another affiliate of the individual is:
      - (i) an officer;
      - (ii) a director;
      - (iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
      - (iv) a controlling individual;
  - (4) with respect to a limited partnership:
    - (A) a general partner; and
    - (B) a limited partner who is a controlling individual;
  - (5) with respect to a limited liability company:
    - (A) an owner who is a manager as described by the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); and
    - (B) each owner who is a controlling individual; and
  - (6) with respect to any other business entity, a controlling individual.

SECTION 1.15. Section 242.066, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsections (f), (g), and (h) to read as follows:

(a) The department may assess an administrative [a civil] penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by an institution; or

(B) any portion of the premises of an institution;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter; or

(6) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final.

(b) Except as provided by Subsection (f) and Section 242.0665(c), the [The] penalty may not be less than \$500 or more than \$15,000 [exceed \$10,000] a day for each violation.

(f) The penalty for a violation of Section 242.073(c), a rule adopted under Section 242.1225, or a right of a resident adopted under Subchapter L may not exceed \$1,000 a day for each violation. This subsection does not apply to conduct that violates both Subchapter K or a standard adopted under Subchapter K and a right of a resident adopted under Subchapter L.

(g) The persons against whom an administrative penalty may be assessed under Subsection (a) include:

(1) an applicant for a license under this chapter;

(2) a license holder;

(3) a partner, officer, director, or managing employee of a license holder or applicant; and

(4) a person who controls an institution.

(h) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

SECTION 1.16. Subchapter C, Chapter 242, Health and Safety Code, is amended by adding Section 242.0665 to read as follows:

Sec. 242.0665. RIGHT TO CORRECT. (a) The department may not assess an administrative penalty against an institution under this subchapter if, not later than the 30th day after the date the institution receives notice under Section 242.067(c), the institution corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the department determines:

(A) results in serious harm to or death of a resident;

(B) constitutes a serious threat to the health or safety of a resident; or

(C) substantially limits the institution's capacity to provide care;

(2) to a violation described by Sections 242.066(a)(2)-(6);

(3) to a violation of a rule adopted under Section 242.1225 or of Section 242.133 or 242.1335; or

(4) to a violation of a right of a resident adopted under Subchapter L.

(c) An institution that corrects a violation under Subsection (a) must maintain the correction. If the institution fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess an administrative penalty under this subchapter for the subsequent violation. A penalty assessed under this subsection may not be less than \$500 or more than \$30,000 a day for each violation. The department is not required to provide the institution an opportunity to correct the subsequent violation under this section.

SECTION 1.17. Section 242.068(d), Health and Safety Code, is amended to read as follows:

(d) Based on the findings of fact and recommendations of the hearing examiner, the commissioner by order may find:

(1) a violation has occurred and assess an administrative [~~a civil~~] penalty; or

(2) a violation has not occurred.

SECTION 1.18. Sections 242.067, 242.069, and 242.070, Health and Safety Code, are amended to read as follows:

Sec. 242.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) The department may issue a preliminary report stating the facts on which it concludes that a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter has occurred if it has:

(1) [~~it has~~] examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 242.069 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended; [~~and~~]

(3) a statement of whether the violation is subject to correction under Section 242.0665 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the institution must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; ~~or~~

(2) make a written request for a hearing; or

(3) if the violation is subject to correction under Section 242.0665, submit a plan of correction to the department for approval.

(e) If the violation is subject to correction under Section 242.0665, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm that the violation has been corrected and shall notify the person that:

(1) the correction is satisfactory and that a penalty is not assessed; or

(2) the correction is not satisfactory and that a penalty is recommended.

(f) Not later than the 20th day after the date on which a notice under Subsection (e)(2) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(g) If the person charged with the violation consents to the administrative penalty recommended by the department, ~~or~~ does not timely respond to a ~~the~~ notice sent under Subsection (c) or (e), or fails to correct the violation to the department's satisfaction, the commissioner or the commissioner's designee shall:

(1) ~~assess the administrative penalty recommended by the department;~~ ~~or~~

(2) ~~order a hearing to be held on the findings and recommendations in the department's report.~~

(h) ~~(f)~~ If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Sec. 242.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; ~~INTEREST~~; REFUND. (a) The commissioner shall give notice of the decision taken under Section 242.068(d) to the person charged. If the commissioner finds that a violation has occurred and has assessed an administrative ~~a civil~~ penalty, the commissioner shall give written notice to the person charged of:

(1) the findings;

(2) ~~;~~ the amount of the penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether payment of the penalty or other action under Section 242.071 is required; ~~;~~ and

(5) the person's right to judicial review of the order.

(b) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or  
(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or all of the above.

(c) Notwithstanding Subsection (b), the department may permit the person to pay the penalty in installments or may require the person to use the amount of the penalty under the department's supervision in accordance with Section 242.071.

(d) If the person does not pay the penalty within the 30-day period:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest. [If the person seeks judicial review of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (b), shall:

[(1) send the amount of the penalty to the commissioner for placement in an escrow account; or

[(2) post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until the judicial review of the order or decision is final.

[(d) A person who fails to comply with Subsection (c) waives the right to judicial review, and the commissioner may request enforcement by the attorney general.]

(e) If a penalty is reduced or not assessed, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(f) Accrued interest on amounts collected after the expiration of the 30-day period [remitted by the commissioner] under Subsection (d) [(c)(1)] shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the notice of the commissioner's order is received by the person [penalty is paid to the commissioner under Subsection (c)] and ending on the date the penalty is paid [remitted].

[(g) A penalty collected under this section shall be deposited to the credit of the nursing and convalescent home trust fund established under Section 242.096.]

Sec. 242.070. APPLICATION OF OTHER LAW. (a) Except as provided by Subsection (b), the [The] department may not assess a penalty under both this subchapter and Section 32.021, Human Resources Code, for a violation arising out of the same act or failure to act.

(b) A penalty may be assessed under this chapter for an act or failure to act that is a violation of this chapter and that also is a violation of contractual obligations imposed under Chapter 32, Human Resources Code. Not more than one penalty authorized by this chapter may be assessed under this subsection for an occurrence of an act or failure to act.

SECTION 1.19. Subchapter C, Chapter 242, Health and Safety Code, is amended by adding Sections 242.071-242.076 to read as follows:

Sec. 242.071. AMELIORATION OF VIOLATION. In lieu of ordering payment of the administrative penalty under Section 242.069, the commissioner may require the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

Sec. 242.072. RECOVERY OF COSTS. (a) If the attorney general brings an action against a person under Section 242.063 or 242.065 or to enforce an administrative penalty assessed under this subchapter, and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs. The attorney general is not entitled to recover reasonable expenses and costs on behalf of the attorney general under this subsection unless the court orders injunctive relief or payment of a civil or administrative penalty or the amount of a civil or administrative penalty is otherwise collected.

(b) For purposes of this section, "reasonable expenses and costs" includes expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(c) Costs and expenses collected under this section shall be deposited to the credit of the general revenue fund and may be appropriated only to the department and the attorney general.

Sec. 242.073. OTHER REMEDIES. (a) If the commissioner finds that an institution has committed an act for which an administrative penalty may be imposed under Section 242.066, the commissioner may, as appropriate under the circumstances, order the institution to immediately suspend admissions.

(b) A suspension of admissions ordered under Subsection (a) is effective on the date a representative of the institution receives notice of the order and of the manner in which the order may be appealed. The department must provide an opportunity for a hearing with respect to an appeal of the order not later than the 14th day after the date the suspension becomes effective.

(c) During the period that an institution is ordered to suspend admissions, the institution shall post a notice of the suspension on all doors providing ingress to and egress from the institution. The notice shall be posted in the form required by the department.

(d) A person commits an offense if the person knowingly:

(1) violates Subsection (c); or

(2) removes a notice posted under Subsection (c) before the facility is allowed to admit residents.

(e) An offense under Subsection (d) is a Class C misdemeanor.

Sec. 242.074. INVESTIGATIONS BY ATTORNEY GENERAL. (a) The attorney general may conduct an investigation of an unlawful act under this chapter, a rule imposed under this chapter, or another law affecting residents under Subsection (b) if:



(1) the department requests the investigation; and

(2) the attorney general has reason to believe that:

(A) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of the unlawful act;

(B) the person is committing, has committed, or is about to commit the unlawful act; and

(C) it is in the public interest to conduct an investigation to ascertain whether the person is committing, has committed, or is about to commit the unlawful act.

(b) In investigating an unlawful act under this chapter, a rule imposed under this chapter, or another law affecting residents, the attorney general, in addition to investigations undertaken under other authority, may:

(1) require a person to file on a prescribed form a statement in writing, under oath or affirmation, as to all the facts and circumstances concerning the alleged unlawful act and other information considered necessary by the attorney general;

(2) examine under oath a person in connection with the alleged unlawful act;

(3) execute in writing and serve on the person a civil investigative demand under Section 242.075 that requires the person to produce the documentary material and to permit inspection and copying of the material; and

(4) make a reasonable and appropriate on-site inspection and investigation of the affected institution.

Sec. 242.075. CIVIL INVESTIGATIVE DEMAND. (a) A civil investigative demand must:

(1) state the rule or statute under which the alleged unlawful act is being investigated and the general subject matter of the investigation; and

(2) if the civil investigative demand requests documentary material:

(A) describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

(B) prescribe a return date by which the documentary material is to be produced; and

(C) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.

(b) A civil investigative demand may require disclosure of any documentary material that is discoverable under this chapter or the Texas Rules of Civil Procedure.

(c) Service of a civil investigative demand may be made by:

(1) delivering an executed copy of the demand to the person to be served or to a partner, officer, or agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or

(3) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served at the person's principal place of

business in this state or, if the person has no place of business in this state, to a person's principal office or place of business.

(d) Documentary material demanded under this section must be produced for inspection and copying during normal business hours at the office of the attorney general, the principal place of business of the person served, or a site to which the person served and the attorney general agree.

(e) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section to a person other than an authorized employee of the attorney general or the department without the consent of the person who produced the documentary material. The attorney general shall prescribe reasonable conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person. The attorney general may use the documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter and may present the documentary material before a court.

(f) A person may file a petition, stating good cause, to extend the return date for a demand for documentary material or other information or to modify or set aside the demand. A petition under this section must be filed in a district court of Travis County before the earlier of:

- (1) the return date specified in the demand; or
- (2) the 20th day after the date the demand is served.

(g) Except as provided by court order, a person on whom a civil investigative demand has been served under this section shall comply with the terms of the demand.

(h) A person who has committed an unlawful act in relation to any institution in this state has submitted to the jurisdiction of this state, and personal service of a civil investigative demand under this section may be made on the person outside of this state.

(i) This section does not limit the authority of the attorney general to conduct investigations or to have access to a person's documentary materials or other information under another state or federal law, the Texas Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

(j) The attorney general may file in a district court of Travis County a petition for an order to enforce a civil investigative demand if:

- (1) a person fails to comply with the demand; or
- (2) copying and reproduction of documentary material demanded cannot be satisfactorily accomplished and the person refuses to surrender the documentary material.

(k) If a petition is filed under Subsection (j), the court may determine the matter presented and may enter an order to implement this section.

(l) Failure to comply with a final order entered under Subsection (k) is punishable by contempt.

(m) A final order issued by a district court under Subsection (k) is subject to appeal to the supreme court.

(n) A person who releases information to the attorney general in accordance with a civil investigative demand under this section is not civilly

liable for surrendering confidential or private material, including the health and medical records of residents.

(o) An institution that refuses to comply with a civil investigative demand relating to records of the institution or residents is liable for a civil penalty of \$10,000. Each day of refusal constitutes a separate violation.

Sec. 242.076. USE OF WITHHELD EVIDENCE. An institution may not use, in any action brought by the department or by the attorney general based on the institution's violation of this chapter, rules adopted under this chapter, or any other law, any evidence withheld from the department or the attorney general during an inspection or investigation under this chapter if the evidence:

(1) was requested by the department or the attorney general; and

(2) is not privileged under the law of this state.

SECTION 1.20. Section 242.096(e), Health and Safety Code, is amended to read as follows:

(e) Any unencumbered amount in the nursing and convalescent home trust fund in excess of \$500,000 [~~\$100,000~~] at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing this chapter.

SECTION 1.21. Section 242.097, Health and Safety Code, is amended to read as follows:

Sec. 242.097. ADDITIONAL LICENSE FEE. (a) In addition to the license fee provided by Section 242.034, the department shall adopt an annual fee to be charged and collected if the amount of the nursing and convalescent home trust fund is less than \$500,000 [~~\$100,000~~]. The fee shall be deposited to the credit of the nursing and convalescent home trust fund created by this subchapter.

(b) The department shall set the fee for each nursing and convalescent home at \$1 for each licensed unit of capacity or bed space in that home or in an amount necessary to provide \$500,000 [~~\$100,000~~] in the fund.

SECTION 1.22. Subchapter E, Chapter 242, Health and Safety Code, is amended by adding Section 242.1225 to read as follows:

Sec. 242.1225. ADDITIONAL REPORTING REQUIREMENT. (a) The board shall adopt rules requiring any person required to report abuse or neglect under Section 242.122 to report other conduct or conditions specified by the rules. The rules must require reporting of conduct or conditions resulting in exploitation of residents and accidental injury to or hospitalization of residents.

(b) A report made under this section must be made in the manner specified by board rule.

SECTION 1.23. Section 242.126, Health and Safety Code, is amended to read as follows:

Sec. 242.126. INVESTIGATION AND REPORT OF DEPARTMENT OR DESIGNATED [~~RECEIVING~~] AGENCY. (a) The department or the designated agency shall make a thorough investigation [~~promptly~~] after receiving an [~~either the~~] oral or written report of abuse or neglect under Section 242.122 or another complaint alleging abuse or neglect.

(b) The primary purpose of the investigation is the protection of the resident.

(c) The agency shall begin the investigation:

(1) within 24 hours of receipt of the report or other allegation, if the report of abuse or neglect or other complaint alleges that:

(A) a resident's health or safety is in imminent danger;

(B) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint; or

(C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint; or

(2) before the end of the next working day after the date of receipt of the report of abuse or neglect or other complaint, if the report or complaint alleges the existence of circumstances that could result in abuse or neglect and that could place a resident's health or safety in imminent danger.

(d) The department shall adopt rules governing the conduct of investigations, including procedures to ensure that the complainant and the resident, the resident's next of kin, and any person designated to receive information concerning the resident receive periodic information regarding the investigation.

(e) In investigating the report of abuse or neglect or other complaint, the investigator for the investigating agency shall:

(1) make an unannounced visit to the institution to determine the nature and cause of the alleged abuse or neglect of the resident;

(2) interview each available witness identified by any source as having personal knowledge relevant to the report of abuse or neglect or other complaint;

(3) personally inspect any physical circumstance that is relevant and material to the report of abuse or neglect or other complaint and that may be objectively observed; and

(4) write an investigation report that includes:

(A) the investigator's personal observations;

(B) a review of relevant documents and records;

(C) a summary of each witness statement; and

(D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation.

(f) An investigator for an investigating agency shall conduct an interview under Subsection (e)(2) in private unless the witness expressly requests that the interview not be private.

(g) Not later than the 30th day after the date the investigation is complete, the investigator shall prepare the written report required by Subsection (e). The department shall make the investigation report available to the public on request after the date the department's letter of determination is complete. The department shall delete from any copy made available to the public the name of:

(1) any resident;

(2) the person making the report of abuse or neglect or other complaint; and

(3) an individual interviewed in the investigation.

(h) In the investigation, the department or the designated agency shall determine:

- (1) the nature, extent, and cause of the abuse or neglect;
- (2) the identity of the person responsible for the abuse or neglect;
- (3) the names and conditions of the other residents;
- (4) an evaluation of the persons responsible for the care of the residents;
- (5) the adequacy of the institution environment; and
- (6) any other information required by the department.

(i) ~~[(d)] The investigation may include a visit to the resident's institution and an interview with the resident if these actions are determined by the department to be appropriate.~~

~~[(e)]~~ If the department attempts to carry out an on-site investigation and it is shown that admission to the institution, or any place where the resident is located, cannot be obtained, a probate or county court shall order the person responsible for the care of the resident or the person in charge of a place where the resident is located to allow entrance for the interview and investigation.

(j) ~~[(f)]~~ Before the completion of the investigation the department shall file a petition for temporary care and protection of the resident if the department determines that immediate removal is necessary to protect the resident from further abuse or neglect.

(k) ~~[(g)]~~ The department or the designated agency shall make a complete final written report of the investigation and submit the report and its recommendations to the district attorney and if a law enforcement agency has not investigated the report of abuse or neglect or other complaint, to the appropriate law enforcement agency.

SECTION 1.24. Section 242.127, Health and Safety Code, is amended to read as follows:

Sec. 242.127. CONFIDENTIALITY. A report, record, or working paper used or developed in an investigation made under this subchapter and the name of any person making a report under this subchapter are [is] confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency.

SECTION 1.25. Section 242.133(a), Health and Safety Code, is amended to read as follows:

(a) A person has a cause of action against an institution, or the owner or employee of the institution, that suspends or terminates the employment of the person or otherwise disciplines or discriminates or retaliates against the person for making a report or complaint under this chapter to [reporting the abuse or neglect of a resident to the person's supervisors,] the department[;] or a law enforcement agency, for reporting the abuse or neglect or other complaint to the person's supervisors, or for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the institution.

SECTION 1.26. Section 242.1335(a), Health and Safety Code, is amended to read as follows:

(a) An institution may not retaliate or discriminate against a resident if the resident, the resident's guardian, or any other person makes a complaint or files a grievance concerning the facility or reports [abuse or neglect] in accordance with this subchapter.

SECTION 1.27. Subchapter H, Chapter 242, Health and Safety Code, as added by Section 5, Chapter 1049, Acts of the 74th Legislature, Regular Session, 1995, is redesignated as Subchapter J and the subchapter heading is amended to read as follows:

**SUBCHAPTER J [H]. ARBITRATION OF CERTAIN DISPUTES**

SECTION 1.28. Section 242.253(c), Health and Safety Code, is amended to read as follows:

(c) The party that elects arbitration [department] shall pay the cost of the arbitration [if the department elects the arbitration. The cost of the arbitration shall be shared equally by the department and the institution if the institution elects the arbitration]. The total fees and expenses paid for an arbitrator for a day may not exceed \$500.

SECTION 1.29. Sections 242.267 and 242.268, Health and Safety Code, are amended to read as follows:

Sec. 242.267. COURT VACATING ORDER. (a) On a finding described by Subsection (b) [application of the institution], a court shall:

(1) on application of an institution, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of an institution.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 242.264(a).

(c) ~~(b)~~ If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) ~~(c)~~ A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the institution or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) ~~(d)~~ Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Sec. 242.268. NO ARBITRATION IN CASE OF EMERGENCY ORDER OR CLOSING ORDER. This subchapter does not apply to an order issued under Section 242.062 or 242.073, and neither the department nor the institution may elect to arbitrate a dispute if the subject matter of the dispute is part of the basis for suspension of an institution's license or issuance of a closing order under Section 242.062 or suspension of admissions under Section 242.073.

SECTION 1.30. Chapter 242, Health and Safety Code, is amended by redesignating Subchapter F as Subchapter N and adding a new Subchapter F and Subchapters K, L, and M to read as follows:

**SUBCHAPTER F. MEDICAL, NURSING, AND DENTAL SERVICES  
OTHER THAN ADMINISTRATION OF MEDICATION**

**Sec. 242.151. PHYSICIAN SERVICES.** (a) An institution shall have at least one medical director who is licensed in this state.

(b) The medical director is responsible for a resident's assessment and comprehensive plan of care and shall review, revise, and sign orders relating to any medication or treatment in the plan of care.

(c) Each resident has the right to choose a personal attending physician.

**Sec. 242.152. PHYSICIAN SERVICES FOR RESIDENTS YOUNGER THAN 18 YEARS OF AGE.** (a) An institution shall use appropriate pediatric consultative services for a resident younger than 18 years of age, in accordance with the resident's assessment and comprehensive plan of care.

(b) A pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs shall participate in all aspects of the resident's medical care.

**Sec. 242.153. DIRECTOR OF NURSING SERVICES.** An institution shall have a director of nursing services who shall be a registered nurse. The director of nursing services is responsible for:

(1) coordinating each resident's comprehensive plan of care; and

(2) ensuring that only personnel with an appropriate license or permit administer medication.

**Sec. 242.154. NURSING SERVICES.** (a) An institution shall provide the nursing care required to allow each resident to achieve and maintain the highest possible degree of function and independence medically possible.

(b) The institution shall maintain sufficient staff to provide nursing and related services:

(1) in accordance with each resident's plan of care; and

(2) to obtain and maintain the physical, mental, and psychosocial functions of each resident at the highest practicable level, as determined by the resident's assessment and plan of care.

**Sec. 242.155. PEDIATRIC NURSING SERVICES.** An institution shall ensure that:

(1) nursing services for a resident younger than 18 years of age are provided by a staff member who has been instructed and has demonstrated competence in the care of children; and

(2) consultative pediatric nursing services are available to the staff if the institution has a resident younger than 18 years of age.

**Sec. 242.156. REQUIRED MEDICAL EXAMINATION.** (a) Except as required by federal law, the department shall require that each resident be given at least one medical examination each year.

(b) The department shall specify the details of the examination.

**Sec. 242.157. DENTAL EXAMINATION.** (a) The department shall require that each resident of an institution or the resident's custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.

(b) Each institution shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(c) The institution is not liable for any costs relating to a dental examination under this section.

#### SUBCHAPTER K. QUALITY OF CARE

Sec. 242.401. QUALITY OF LIFE. (a) An institution shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life and dignity. An institution that admits a resident who is younger than 18 years of age must provide care to meet the resident's unique medical and developmental needs.

(b) A resident of an institution has the right to reside and receive services in the institution with reasonable accommodation of individual needs, except to the extent the health or safety of the resident or other residents would be endangered.

Sec. 242.402. QUALITY OF CARE. An institution shall provide to each resident the necessary care or service needed to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being, in accordance with:

(1) each resident's individual assessment and comprehensive plan of care; and

(2) the rules and standards relating to quality of care adopted under this chapter.

Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF CARE. (a) The department shall adopt standards to implement Sections 242.401 and 242.402. Those standards must, at a minimum, address:

(1) admission of residents;

(2) care of residents younger than 18 years of age;

(3) an initial assessment and comprehensive plan of care for residents;

(4) transfer or discharge of residents;

(5) clinical records;

(6) infection control at the institution;

(7) rehabilitative services;

(8) food services;

(9) social services and activities;

(10) prevention of pressure sores;

(11) bladder and bowel retraining programs for residents;

(12) prevention of complications from nasogastric or gastrostomy tube feedings;

(13) relocation of residents within an institution;

(14) postmortem procedures; and

(15) appropriate use of chemical and physical restraints.

(b) The department may adopt standards in addition to those required by Subsection (a) to implement Sections 242.401 and 242.402.

Sec. 242.404. POLICIES, PROCEDURES, AND PRACTICES FOR QUALITY OF CARE AND QUALITY OF LIFE. (a) Each institution shall comply with the standards adopted under this subchapter and shall develop written operating policies to implement those standards.



(b) The department shall adopt standards governing the subject matter to be addressed by the policies and procedures and the manner in which each institution shall implement the policies and procedures.

(c) The policies and procedures must be available to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

[Sections 242.405-242.500 reserved for expansion]

#### SUBCHAPTER L. RIGHTS OF RESIDENTS

Sec. 242.501. RESIDENT'S RIGHTS. (a) The department by rule shall adopt a statement of the rights of a resident. The statement must reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

- (1) to be free from abuse and exploitation;
- (2) to safe, decent, and clean conditions;
- (3) to be treated with courtesy, consideration, and respect;
- (4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;
- (5) to privacy, including privacy during visits and telephone calls;
- (6) to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;
- (7) to have information about the resident in the possession of the institution maintained as confidential;
- (8) to retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment;
- (9) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;
- (10) to be free from the use of restraints;
- (11) to a written statement or admission agreement describing the services provided by the institution and the related charges;
- (12) to manage the resident's own finances or to delegate that responsibility to another person;
- (13) to access money and property that the resident has deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;
- (14) to keep and use personal property, secure from theft or loss;
- (15) to not be relocated within the institution, except in accordance with standards adopted by the department under Section 242.403;
- (16) to receive visitors;
- (17) to receive unopened mail and to receive assistance in reading or writing correspondence;
- (18) to participate in activities inside and outside the institution;
- (19) to wear the resident's own clothes;

(20) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent; and

(21) to not be discharged from the institution except as provided in the standards adopted by the department under Section 242.403.

(b) A right of a resident may be restricted only to the extent necessary to protect:

(1) a right of another resident, particularly a right of the other resident relating to privacy and confidentiality; or

(2) the resident or another person from danger or harm.

(c) The department may adopt rights of residents in addition to those required by Subsection (a) and may consider additional rights applicable to residents in other jurisdictions.

Sec. 242.502. RIGHTS CUMULATIVE. The rights established under this subchapter are cumulative of the rights established under any other law.

Sec. 242.503. DUTIES OF INSTITUTION. (a) An institution shall develop and implement policies to protect resident rights.

(b) An institution and the staff of an institution may not violate a right adopted under this subchapter.

Sec. 242.504. INFORMATION ABOUT RESIDENT'S RIGHTS AND VIOLATIONS. (a) An institution shall inform each resident and the resident's next of kin or guardian of the rights adopted under this subchapter and shall explain the rights to the resident and the resident's next of kin or guardian. The institution shall provide a written statement of:

(1) all of the resident's rights; and

(2) any additional rules adopted by the institution involving resident rights and responsibilities.

(b) The institution shall provide a copy of the written statement to:

(1) each resident;

(2) the next of kin or guardian of each resident; and

(3) each member of the staff of the institution.

(c) The institution shall maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the institution's records.

(d) The institution shall include the written statement in the informational materials required to be made available under Section 242.042.

(e) An institution that has been cited by the department for a violation of any right adopted under this subchapter shall include a notice of the citation in the informational materials required by Section 242.042(a)(8). The notice of citation must continue to be included in the informational materials until any regulatory action or proceeding with respect to the violation is complete and the department has determined that the institution is in full compliance with the applicable requirement.

[Sections 242.505-242.550 reserved for expansion]

#### SUBCHAPTER M. COMPLAINT INSPECTIONS

Sec. 242.551. COMPLAINT REQUESTING INSPECTION. (a) A person may request an inspection of an institution in accordance with this chapter by making a complaint notifying the department of an alleged violation of law and requesting an inspection.

(b) The department shall encourage a person who makes an oral complaint under Subsection (a) to submit a written, signed complaint.

Sec. 242.552. DISCLOSURE OF SUBSTANCE OF COMPLAINT. The department may not provide information to the institution relating to the substance of a complaint made under this subchapter before an on-site inspection is begun in accordance with this subchapter.

Sec. 242.553. CONFIDENTIALITY. The name of the person making the complaint is confidential and may not be released to the institution or any other person, unless the person making the complaint specifically requests that the person's name be released.

Sec. 242.554. PRELIMINARY REVIEW OF COMPLAINT: INSPECTION. (a) On receipt of a complaint under this subchapter, the department shall make a preliminary review of the complaint.

(b) Within a reasonable time after receipt of the complaint, the department shall make an on-site inspection or otherwise respond to the complaint unless the department determines that:

(1) the person making the complaint made the complaint to harass the institution;

(2) the complaint is without any reasonable basis; or

(3) sufficient information in the possession of the department indicates that corrective action has been taken.

(c) The department shall promptly notify the person making the complaint of the department's proposed course of action under Subsection (b) and the reasons for that action.

[Sections 242.555-242.600 reserved for expansion]

SUBCHAPTER N [F]. ADMINISTRATION OF MEDICATION  
[MEDICAL AND DENTAL CARE]

Sec. 242.601. MEDICATION ADMINISTRATION. (a) An institution must establish medication administration procedures to ensure that:

(1) medications to be administered are checked against the orders of:

(A) a physician; or

(B) an advanced practice nurse issued in accordance with protocols developed jointly by the physician and the advanced practice nurse;

(2) the resident is identified before the administration of a medication;

(3) each resident's clinical record includes an individual medication record in which the dose of medication administered is properly recorded by the person who administered the medication;

(4) medications and biologicals are prepared and administered to a resident by the same individual, except under unit-of-use package distribution systems; and

(5) a medication prescribed for one resident is not administered to any other person.

(b) The medication administration procedures must comply with this subchapter and the rules adopted by the board under Section 242.608.

Sec. 242.602. PHARMACIST SERVICES. (a) An institution shall:

(1) employ a licensed pharmacist responsible for operating the institution's pharmacy; or

(2) contract, in writing, with a licensed pharmacist to advise the institution on ordering, storage, administration, and disposal of medications and biologicals and related recordkeeping.

(b) The institution shall allow residents to choose their pharmacy provider from any pharmacy that is qualified to perform the services.

Sec. 242.603. STORAGE AND DISPOSAL OF MEDICATIONS.

(a) An institution shall store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Poisons, medications used externally, and medications taken internally shall be stored on separate shelves or in separate cabinets. Medication stored in a refrigerator containing other items shall be kept in a separate compartment with appropriate security. The institution shall store a medication in a locked area that must remain locked unless an individual authorized to distribute the medication is present.

(b) The institution shall properly dispose of:

(1) any medication that is discontinued or outdated, except as provided by Subsection (c); and

(2) any medication in a container with a worn or illegible label or missing a label.

(c) A discontinued medication that has not been destroyed must be reinstated if reordered.

(d) An institution shall release the medications of a resident who is transferred directly to another institution or who is discharged to home or to the new institution or to the resident or resident's next of kin or guardian, as appropriate. The institution may release a medication to a resident only on the written or verbal authorization of the attending physician.

Sec. 242.604. REPORTS OF MEDICATION ERRORS AND ADVERSE REACTIONS. An institution's nursing staff must report medication errors and adverse reactions to the resident's physician in a timely manner, as warranted by an assessment of the resident's condition, and record the errors and reactions in the resident's clinical record.

Sec. 242.605. MEDICATION REFERENCE SOURCES. An institution shall maintain updated medication reference texts or sources. If the institution has a resident younger than 18 years of age, these texts or sources must include information on pediatric medications, dosages, sites, routes, techniques of administration of medications, desired effects, and possible side effects.

Sec. 242.606 [242.151]. PERMITS TO ADMINISTER MEDICATION. A person may not administer medication to a resident unless the person:

(1) holds a license under state law that authorizes the person to administer medication; or

(2) holds a permit issued under Section 242.610 [242.154] and acts under the authority of a person who holds a license under state law that authorizes the person to administer medication.

Sec. 242.607 [242.151]. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 242.606 and 242.614 [242.151 and 242.158] do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Board of Nurse Examiners;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Board of Vocational Nurse Examiners;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under this subchapter who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Board of Nurse Examiners or the department and the Board of Vocational Nurse Examiners, as appropriate.

Sec. 242.608 [~~242.152~~]. RULES FOR ADMINISTRATION OF MEDICATION. The board by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to administer medication to a resident;

(2) curricula to train persons to administer medication to a resident;

(3) minimum standards for the approval of programs to train persons to administer medication to a resident and for rescinding approval; and

(4) the acts and practices that are allowed or prohibited to a permit holder.

Sec. 242.609 [~~242.153~~]. TRAINING PROGRAMS TO ADMINISTER MEDICATION. (a) An application for the approval of a training program must be made to the department on a form and under rules prescribed by the board.

(b) The department shall approve a training program that meets the minimum standards adopted under Section 242.608 [~~242.152~~]. The department may review the approval annually.

Sec. 242.610 [~~242.154~~]. ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. (a) To be issued or to have renewed a permit to administer medication, a person shall apply to the department on a form prescribed and under rules adopted by the board.

(b) The department shall prepare and conduct, at the site of the training program, an examination for the issuance of a permit.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) The department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 242.608 [~~242.152~~];

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee determined by the board.

(c) A permit is valid for one year and is not transferable.

(f) The department may issue a permit to an employee of a state or federal agency listed in Section 242.003(a)(6)(B).

Sec. 242.611 [~~242.155~~]. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. [(a)] The board shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions. The fees may not exceed:

(1) \$25 for a combined permit application and examination fee; and

(2) \$15 for a renewal permit application fee.

[(b) Fees received under this section may only be appropriated to the department to defray costs incurred under this section.]

Sec. 242.612 [~~242.156~~]. VIOLATION OF PERMITS TO ADMINISTER MEDICATION. (a) For the violation of this subchapter or a rule adopted under this subchapter, the department may:

(1) suspend, revoke, or refuse to renew a permit;

(2) suspend a permit in an emergency; or

(3) rescind training program approval.

(b) Except as provided by Section 242.613 [~~242.157~~], the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

Sec. 242.613 [~~242.157~~]. EMERGENCY SUSPENSION OF PERMITS TO ADMINISTER MEDICATION. (a) The department shall issue an order to suspend a permit issued under this subchapter if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

Sec. 242.614 [~~242.158~~]. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly administers medication to a resident and the person:

(1) does not hold a license under state law that authorizes the person to administer medication; or

(2) does not hold a permit issued by the department under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

~~[Sec. 242.159. REQUIRED MEDICAL EXAMINATION. (a) The department shall require each resident to be given at least one medical examination each year.~~

~~[(b) The department shall specify the details of the examination.~~

~~[Sec. 242.160. DENTAL EXAMINATION. (a) The department shall require that each resident of a nursing home or custodial care home or the resident's custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.~~

~~[(b) Each nursing home or custodial care home shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.~~

~~[(c) The nursing home or custodial care home is not liable for any costs relating to a dental examination under this section.]~~

Sec. 242.615 [242.161]. EMERGENCY MEDICATION KIT. (a) An institution licensed under this chapter is entitled to maintain a supply of controlled substances in an emergency medication kit for a resident's emergency medication needs.

(b) The controlled substances shall be labeled in accordance with all applicable state and federal food and drug laws, including Chapter 481 (Texas Controlled Substances Act).

(c) The board shall adopt rules governing the amount, type, and procedure for use of the controlled substances in the emergency medication kit. The storage of the controlled substances in the kit is under the supervision of the consultant pharmacist.

(d) The administration of the controlled substances in the emergency medication kit shall comply with all applicable laws.

SECTION 1.31. Section 222.0255, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) Chapter 242 establishes the minimum licensing standards for an institution. The licensing standards adopted by the department under this chapter shall be adopted subject to Section 242.037(b) and must comply with Section 242.037(c) and the other provisions of Chapter 242.

SECTION 1.32. Section 242.012, Health and Safety Code, is repealed.

SECTION 1.33. The Texas Board of Human Services shall adopt rules as necessary to implement the change in law made by this article not later than January 1, 1998.

SECTION 1.34. The change in law made by this article to Section 242.097, Health and Safety Code, applies only to a license fee originally due on or after the effective date of this Act. A license fee that was originally due before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 1.35. Except as provided by Section 1.34 of this article, this article applies only to conduct occurring on or after January 1, 1998. Conduct occurring before January 1, 1998, is governed by the law as it existed immediately before September 1, 1997, and that law is continued in effect for that purpose.

## ARTICLE 2. GOVERNMENT FUNDING OF NURSING SERVICES

SECTION 2.01. Section 32.021, Human Resources Code, is amended by amending Subsections (d), (h), (i), (j), and (k) and adding Subsections (l), (m), (n), and (o) to read as follows:

(d) The department ~~shall~~ may include in its contracts for the delivery of medical assistance by nursing facilities provisions for monetary penalties to be assessed for contract violations as required by 42 U.S.C. Section 1396r, including without limitation the Omnibus Budget Reconciliation Act (OBRA), P.L. 100-203, Nursing Home Reform Amendments of 1987, provided that the department ~~shall~~:

~~[(1) establish a penalties and sanctions advisory committee of consumer advocates and long-term care providers to help develop and monitor an appropriate system for assessing penalties; and~~

~~[(2)] develop rules [in accordance with Subsection (i)] to adjudicate claims in contested cases.~~

(h) ~~The [Except to the extent necessary to implement rights granted to an elderly individual under Chapter 102, the] rules adopted by the department for certification of nursing facilities as being in compliance with the requirements for participation in the state Medicaid program must comply with the more stringent of state or [may not be different from the standards imposed by] federal law. The [This subsection does not prevent the] department shall use appropriate [from using any] civil, administrative, or criminal remedies [remedy] authorized by state or federal law with respect to a facility that is in violation of a certification or licensing requirement.~~

(i) The rules adopted under Subsection (d) ~~[(d)(2)]~~ must provide for:

~~[(1)] an informal dispute resolution process that provides for adjudication by an appropriate disinterested person in a regional office of the department and an informal appeal to the department's central office;~~

~~[(2) an administrative appeals process under Chapter 2001, Government Code; and~~

~~[(3) the arbitration process described by Subsection (k)].~~

(j) Except as provided by Subsections (k) and (l), a department survey, complaint investigation, incident investigation, or survey report [A finding by the department] that documents that an institution has violated a standard for participation in the state Medicaid program, or the assessment of a monetary penalty by the department or the payment of a monetary penalty by the institution [under this section], is not admissible as evidence in a civil action to prove that the institution has committed a violation.

(k) ~~Subsection (j) [This subsection] does not:~~

~~(1) apply in an enforcement action or related proceeding in which the state or an agency or political subdivision of the state is a party;~~

~~(2) prohibit or limit the testimony of a department surveyor or investigator in a civil action; or~~

~~(3) bar the admission into evidence in a civil action of a written finding, survey report, complaint investigation, incident investigation, or inspection report of the department that is offered:~~

~~(A) to establish warning or notice to an institution of a relevant finding; or~~



(B) under any rule or evidentiary predicate of the Texas Rules of Civil Evidence.

(l) A department surveyor or investigator may testify in a civil action as to observations, factual findings, conclusions, or violations of requirements for licensure or for certification for participation in the state Medicaid program that were made in the discharge of official duties for the department, in accordance with the Texas Rules of Civil Evidence.

(m) The department may not include as a reimbursable item to a nursing facility an administrative or civil penalty assessed against the facility under this chapter or under Chapter 242, Health and Safety Code.

(n) Notwithstanding any provision of law to the contrary, the department shall terminate a nursing facility's provider agreement if the department has imposed required Category II or III remedies on the facility three times within a 24-month period.

(o) [(\*)] An assessment of monetary penalties under this section is subject to arbitration under Subchapter J [H], Chapter 242, Health and Safety Code.

#### ARTICLE 3. EFFECTIVE DATE; EMERGENCY

SECTION 3.01. This Act takes effect September 1, 1997.

SECTION 3.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

#### Floor Amendment No. 1

Amend CSSB 190 in Section 242.001, Health and Safety Code, as amended by SECTION 1.01 of the bill, by striking Subsection (c) (page 2, lines 11-20, House Committee Printing) and substituting the following:

(c) The rules and standards adopted under this chapter apply to each licensed institution. The rules and standards are not only intended for use in state surveys of institutions and any investigation and enforcement action but are also designed to establish criteria for consumers and providers to assess the quality of care provided in an institution.

#### Floor Amendment No. 2

Amend CSSB 190 as follows:

(1) In Section 242.061(a), Health and Safety Code, as amended by SECTION 1.11 of the bill, following the semicolon at the end of Subdivision (1) (page 14, line 24, House Committee Printing), insert "or".

(2) In Section 242.061(a), Health and Safety Code, as amended by SECTION 1.11 of the bill, at the end of Subdivision (2) (page 14, line 26, House Committee Printing), strike "; or".

(3) In Section 242.061(a), Health and Safety Code, as amended by SECTION 1.11 of the bill, strike Subdivision (3) (page 14, line 27, and page 15, line 1, House Committee Printing) and substitute: "[substantially failed to comply with the requirements established under this chapter]."

**Floor Amendment No. 4**

Amend **CSSB 190** by inserting a new SECTION 1.06 of the bill, and renumbering the remaining sections accordingly, to read as follows:

"SECTION 1.06. Subchapter A, Chapter 242, Health and Safety Code, is amended by adding Section 242.017 to read as follows:

Sec. 242.017. MISCELLANEOUS PROVISIONS. Notwithstanding any other law, no provisions of Section 17.41-17.63, Business and Commerce Code, shall apply to any violation or alleged violation of this chapter with respect to any private cause of action."

**Floor Amendment No. 5**

Amend **CSSB 190** as follows:

(1) In Section 242.032, Health and Safety Code, as amended by SECTION 1.06 of the bill, in Subsection (e), (page 8, line 9, House committee printing) strike "sworn affidavit of a satisfactory" and substitute "notarized statement of".

(2) In Section 242.032, Health and Safety Code, as amended by SECTION 1.06 of the bill, in Subsection (e), (page 8, line 14, House committee printing) strike "10-year" and substitute "5-year".

(3) In Section 242.032, Health and Safety Code, as amended by SECTION 1.06 of the bill, in Subsection (f), (page 8, lines 18-19, House committee printing) strike "information relating to the history of the financial condition" and substitute "a statement of the financial solvency".

(4) In Section 242.032, Health and Safety Code, as amended by SECTION 1.06 of the bill, in Subsection (f), (page 8, line 21, House committee printing), strike "10-year" and substitute "5-year".

**Floor Amendment No. 6**

Amend **CSSB 190** as follows:

(1) On page 8, strike line 27.

(2) On page 9, strike lines 1-4 and substitute the following:

(a) After receiving an application for a license, the department shall issue the license if, after inspection and investigation, it finds that the applicant or license holder, and any other person described by Section 242.032(d), [and facilities] meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter.

(3) On page 10, between lines 22 and 23, insert the following:

(d) To implement Sections 242.032(d), (e), and (f), the department by rule shall adopt minimum standards for the background and qualifications of any person described by Section 242.032(d). The department may not issue or renew a license if a person described by Section 242.032 does not meet the minimum standards adopted under this section.

(4) On page 10, line 23, strike "(d)" and substitute "(e)".

(5) On page 11, line 26, strike "(e)" and substitute "(f)".

(6) On page 12, line 8, strike "(f)" and substitute "(g)".

(7) On page 12, line 16, strike "(g)" and substitute "(h)".

**Floor Amendment No. 7**

Amend CSSB 190 as follows:

On page 10, line 13 strike the sentence that reads: "These rules and minimum standards are expressly created to protect a class of persons to which residents of institutions belong."

**Floor Amendment No. 8**

Amend CSSB 190 as follows:

In Section 242.063 (a)(1), Health and Safety Code, as amended by SECTION 1.13 of the bill add Subsection (e) to read as follows:

"(e) The department by rule shall define "threatened violation" for the purpose of this section."

**Floor Amendment No. 10**

Amend CSSB 190 as follows:

On page 18, line 2, strike lines 2-4 and substitute the following:

(c) Each day of a continuing violation constitutes a separate ground for recovery.

**Floor Amendment No. 11**

Amend CSSB 190 in Section 242.0665(c), as added by Section 1.16 of the bill (page 22, line 9, House committee printing), by striking "less than \$500" and substituting "less than \$1,000".

**Floor Amendment No. 13**

Amend CSSB 190 on page 28, line 14, by striking "injunctive relief or".

**Floor Amendment No. 15**

Amend CSSB 190 as follows:

1) Strike Sections 242.074, 242.075, and 242.076 beginning on page 29, line 20 and continuing through page 34 line 14.

2) Substitute the following:

Sec. 242.074. INVESTIGATIONS BY ATTORNEY GENERAL. The attorney general may conduct an investigation in a nursing facility that is not certified to serve Medicaid recipients in the manner provided in Chapter 36 of the Human Resources Code, if the investigation is requested by the department.

**Floor Amendment No. 16**

Amend CSSB 190 as follows:

(1) In the recital of SECTION 1.19 of the bill (page 27, line 23, House committee printing), strike "242.071-242.076" and substitute "242.071-242.077".

(2) After Section 242.076, Health and Safety Code, as added by SECTION 1.19 of the bill (page 34, between lines 14 and 15, House committee printing) insert the following:

Sec. 242.077. SCOPE AND SEVERITY SYSTEM. The department by rule shall develop and implement, in cooperation with the legislative

oversight committee established under Subchapter O, a scope and severity system to:

(1) evaluate any violation of this chapter or Chapter 32, Human Resources Code, or a rule or standard adopted under either of those chapters; and

(2) determine the appropriate category of enforcement action that shall be taken or may be taken by the department with respect to the violation, including any action authorized under this chapter, Chapter 32, Human Resources Code, or a rule or standard adopted under either of those those chapters that is taken to:

(A) enforce this chapter, Chapter 32, Human Resources Code, or a rule or standard adopted under either of those chapters;

(B) impose a penalty;

(C) protect a resident;

(D) suspend, revoke, or deny renewal of a license or certification; or

(E) refer a violation to the attorney general or another agency for action.

(3) Add an appropriately numbered section to ARTICLE 1 of the bill, to read as follows:

SECTION 1. \_\_. Chapter 242, Health and Safety Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. LEGISLATIVE OVERSIGHT

Sec. 242.651. DEFINITION. In this subchapter, "committee" means the long-term care legislative oversight committee.

Sec. 242.652. APPLICATION OF SUNSET LAW. The long-term care legislative oversight committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished September 1, 2001.

Sec. 242.653. COMPOSITION OF COMMITTEE; PRESIDING OFFICER. (a) The committee is composed of:

(1) two members of the senate and one public member appointed by the lieutenant governor; and

(2) two members of the house of representatives and one public member appointed by the speaker of the house of representatives.

(b) A member of the committee serves at the pleasure of the appointing official.

(c) The lieutenant governor and the speaker of the house of representatives shall appoint the presiding officer of the committee on an alternating basis. The presiding officer shall serve a two-year term expiring February 1 of each odd-numbered year.

Sec. 242.654. COMMITTEE POWERS AND DUTIES. (a) The committee shall:

(1) meet at the call of the presiding officer;

(2) receive information about rules or standards proposed or adopted by the department; and

(3) review specific recommendations for legislation proposed by the department or the attorney general relating to rules and standards applicable to institutions and other long-term care issues.

(b) The committee may issue process, in accordance with Section 301.024, Government Code, to compel the attendance of witnesses and the production of books, records, documents, and instruments required by the committee.

(c) The committee shall monitor the effectiveness and efficiency of the system for regulating institutions in this state.

(d) The committee may request reports and other information from the department and the attorney general relating to the system for regulating institutions in this state and other issues related to long-term care.

(e) The committee shall use the staff resources of the senate and the house of representatives to assist the committee in performing its duties under this section.

Sec. 242.655. REPORT. (a) The committee shall report to the governor, lieutenant governor, and speaker of the house of representatives not later than November 15 of each even-numbered year.

(b) The report must:

(1) identify significant problems in the system for regulating institutions in this state and contain recommendations for action;

(2) include an analysis of the effectiveness and efficiency of the system for regulating institutions in this state, with recommendations for any necessary research;

(3) include an analysis of the continuum of long-term care services available to citizens of this state; and

(4) provide recommendations for legislative action.

Sec. 242.656. RIGHTS OF EMPLOYEES; RETALIATION PROHIBITED. (a) An employee of the department may cooperate with the committee in the performance of its functions.

(b) The department may not suspend or terminate the employment of or take any other adverse personnel action against an employee of the department who cooperates with the committee in good faith.

(c) In this section, "personnel action" has the meaning assigned by Section 554.001, Government Code.

(4) Renumber subsequent sections of the bill accordingly.

#### **Floor Amendment No. 17**

Amend **CSSB 190** in Section 242.1335(a), Health and Safety Code, as amended by SECTION 1.26 of the bill (page 40, line 5, House Committee Printing), by striking "subchapter" and substituting "chapter [~~subchapter~~]".

#### **Amendment No. 18**

Amend **CSSB 190** as follows:

On page 42, line 8, strike subsection (b) and substitute the following:

(b) The attending physician is responsible for a resident's assessment and comprehensive plan of care and shall review, revise, and sign orders relating to any medication or treatment in the plan of care. The responsibilities imposed on the attending physician by this subsection may be performed by an advanced practice nurse or a physician assistant pursuant to protocols jointly developed with the attending physician.

**Floor Amendment No. 19**

Amend **CSSB 190** as follows:

Insert a new subsection (9) of the quoted Section 242.402 of Section 1.30 of the bill, at page 45, line 14, and renumbering the remaining subsections accordingly, to read as follows:

"(9) nutrition services provided by a director of food services who is licensed by the Texas State Board of Examiners of Dietitians, or if not so licensed, who is in scheduled consultation with a person who is so licensed as frequently and for such time as the department shall determine necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each resident;".

**Floor Amendment No. 20**

Amend **CSSB 190** as follows:

(1) After Section 242.404, Health and Safety Code, as added by SECTION 1.30 of the bill (page 46, between lines 11 and 12, House Committee Printing), insert the following:

Sec. 242.405. FOOD SERVICES. In adopting standards for food services under Section 242.403, the department shall ensure that each institution provides nutrition services under the direction of a director of food services who:

(1) is licensed by the Texas State Board of Examiners of Dietitians; or

(2) consults with a person who is licensed by the Texas State Board of Examiners of Dietitians, according to a schedule that meets the requirements of the department with respect to frequency and length of consultation, as necessary to ensure that each resident's diet meets the daily nutritional and special dietary needs of the resident.

(2) In the expansion clause following Subchapter K, Chapter 242, Health and Safety Code, as added by SECTION 1.30 of the bill (page 46, line 12, House Committee Printing), strike "Sections 242.405-242.500" and substitute "Sections 242.406-242.500".

**Floor Amendment No. 21**

Amend **CSSB 190** as follows:

(1) On page 59, between lines 19 and 20, insert the following new section:

"SECTION 1.311. Section 250.006, Health and Safety Code, is amended to read as follows:

Sec. 250.006. **CONVICTIONS BARRING EMPLOYMENT.** A person convicted of an offense listed in this section within five years prior to applying for employment may not be employed in a position the duties of which involve direct contact with a consumer in a facility:

(1) an offense under Chapter 19, Penal Code (criminal homicide);

(2) an offense under Chapter 20, Penal Code (kidnapping and false imprisonment);

(3) an offense under Chapter 21 [~~Section 21.11~~], Penal Code (sexual offenses [~~indecentcy with a child~~]);

- (4) an offense under Chapter 22, Penal Code (assaultive offenses);
- (5) an offense under Section 25.031, Penal Code (agreement to abduct from custody);
- (6) ~~[(5)]~~ an offense under Section 25.08, Penal Code (sale or purchase of a child);
- (7) ~~[(6)]~~ an offense under Section 28.02, Penal Code (arson);
- (8) ~~[(7)]~~ an offense under Section 29.02, Penal Code (robbery); [or]
- (9) ~~[(8)]~~ an offense under Section 29.03, Penal Code (aggravated robbery);
- (10) an offense under Section 30.02, Penal Code (burglary);
- (11) an offense under Section 31.03, Penal Code (theft);
- (12) an offense under Section 32.21, Penal Code (forgery);
- (13) an offense under Section 32.31, Penal Code (credit card or debit card abuse);
- (14) an offense under Section 32.45, Penal Code, (misapplication of fiduciary property or property of financial institution);
- (15) an offense under Section 32.46, Penal Code (securing execution of document by deception);
- (16) an offense under Section 32.47, Penal Code (fraudulent destruction, removal, or concealment of writing);
- (17) an offense under Section 37.10, Penal Code (tampering with governmental record);
- (18) an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
- (19) an offense under Chapter 482, Health and Safety Code (simulated controlled substances); or
- (20) an offense under Chapter 483, Health and Safety Code (Texas Dangerous Drug Act)."

(2) On page 60, between lines 4 and 5, insert the following new section:  
 "SECTION 1.341. The change in law made by this article to Section 250.006, Health and Safety Code, takes effect September 1, 1997, and applies only to a person hired on or after that date in a position the duties of which involve direct contact with a consumer in a facility. The change in law does not apply to a person hired before September 1, 1997, in a position the duties of which involve direct contact with a consumer in a facility as long as the person remains continuously employed in that position on and after the effective date of this Act."

#### **Amendment No. 23**

Amend **CSSB 190** in Section 32.021, Human Resources Code, as amended by SECTION 2.01 of the bill, by striking Subsection (n) (page 62, line 27, and page 63, lines 1-3, House committee printing), and substituting the following:

(n) Notwithstanding any other provision of law, the department shall terminate a nursing facility's provider agreement if the department has imposed required Category II or III remedies on the facility three times within a 24-month period, unless the department makes an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of a facility.

**Floor Amendment No. 24**

Amend **CSSB 190** as follows:

(1) On page 60, line 13, strike "and (o)" and substitute "(o), and (p)".

(2) On page 63, between lines 6 and 7, insert the following:

(p) In any circumstance in which a nursing facility would otherwise be required to admit a resident transferred from another facility, because of an emergency or otherwise, the nursing facility may not admit a resident whose needs cannot be met through service from the facility's staff or in cooperation with community resources or other providers under contract. If a nursing facility refuses to admit a resident under this subsection, the nursing facility shall provide a written statement of the reasons for the refusal to the department within a period specified by department rule. A nursing facility that fails to provide the written statement, or that includes false or misleading information in the statement, is subject to monetary penalties assessed in accordance with this chapter.

SECTION 2.02. If before the Texas Department of Human Services implements Section 32.021(p), Human Resources Code, as added by this Act, the Health and Human Services Commission determines that a waiver or authorization from a federal agency is necessary for implementation, the commission shall request the waiver or authorization and the Texas Department of Human Services shall delay implementing this Act until the waiver or authorization is granted.

**Floor Amendment No. 25**

Amend **CSSB 190**, in Article 2 of the bill, by adding the following appropriately numbered section and renumbering existing sections of the bill appropriately:

SECTION \_\_. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0213 to read as follows:

Sec. 32.0213. NURSING HOME BED CERTIFICATION AND DECERTIFICATION. (a) The department by rule shall establish procedures to certify and decertify unoccupied nursing home beds in accordance with this section.

(b) Except as provided by other law, to be eligible for certification of additional nursing home beds, a nursing facility must maintain for those beds an annual average occupancy rate of at least 80 percent during the three years preceding the date of the request for certification.

(c) The department may decertify nursing home beds under this section if the nursing facility fails to maintain for those beds an annual average occupancy rate of at least 80 percent during the three years preceding the date on which the decertification is effective.

(d) The department may waive for a newly certified nursing facility the occupancy rate requirement prescribed by Subsection (b) or (c).

**Floor Amendment No. 26**

Amend **CSSB 190** as follows:

1.) On page 59, between lines 19 and 20, insert, "SECTION 1.31. Section 242. \_\_, Texas Health and Safety Code, is added to read as follows:



Pursuant to Section 32.043, Texas Human Resources, the department may, no later than three months after receipt of waivers and approvals by the Health Care Financing Administration to do so, contract all or part of the survey process under this chapter with an independent entity or entities to conduct licensing and Medicaid certification surveys. Any entity with which the department contracts to carry out all or part of the survey process shall use computer assisted efforts that measure nursing facility resident outcomes and consumer satisfaction"

2.) Renumber the remaining sections of ARTICLE 1.

3.) On page 63, between lines 6 and 7, insert "SECTION 2.02. Section 32.043, Texas Human Resource Code, is added to read as follows:

(a) No later than November 1, 1997, the department may request necessary waivers and approvals from the federal Health Care Financing Administration and other appropriate entities to enable the state to contract with an independent entity or entities to conduct nursing facility survey and certification.

(b) No later than three months after receipt of the waivers and approvals referenced in subsection (a) of this section and pursuant to Section 242.\_\_, Health and Safety Code, the department may contract with an independent entity or entities to conduct all or part of the nursing facility survey and certification process. Any entity with which the department contracts to carry out all or part of the survey process shall use computer assisted efforts that measure nursing facility resident outcomes and consumer satisfaction"

#### **Floor Amendment No. 27**

Amend Floor Amendment No. 16 to **CSSB 190** to read as follows:

Amend **CSSB 190** as follows:

(1) In the recital of SECTION 1.19 of the bill (page 27, line 23, House committee printing), strike "242.071-242.076" and substitute "242.071-242.077".

(2) After Section 242.076, Health and Safety Code, as added by SECTION 1.19 of the bill (page 34, between lines 14 and 15, House committee printing) insert the following:

Sec. 242.077. SCOPE AND SEVERITY SYSTEM. The department by rule shall develop and implement, in cooperation with the legislative oversight committee established under Subchapter O, a scope and severity system to:

(1) evaluate any violation of this chapter or Chapter 32, Human Resources Code, or a rule or standard adopted under either of those chapters; and

(2) determine the appropriate category of enforcement action that shall be taken or may be taken by the department with respect to the violation, including any action authorized under this chapter, Chapter 32, Human Resources Code, or a rule or standard adopted under either of those those chapters that is taken to:

(A) enforce this chapter, Chapter 32, Human Resources Code, or a rule or standard adopted under either of those chapters;

(B) impose a penalty;  
(C) protect a resident;  
(D) suspend, revoke, or deny renewal of a license or certification; or  
(E) refer a violation to the attorney general or another agency for action.

(3) Add an appropriately numbered section to ARTICLE 1 of the bill, to read as follows:

SECTION 1. Chapter 242, Health and Safety Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. LEGISLATIVE OVERSIGHT

Sec. 242.651. DEFINITION. In this subchapter, "committee" means the long-term care legislative oversight committee.

Sec. 242.652. APPLICATION OF SUNSET LAW. The long-term care legislative oversight committee is abolished and this subchapter expires September 1, 2001.

Sec. 242.653. COMPOSITION OF COMMITTEE; PRESIDING OFFICER. (a) The committee is composed of:

(1) two members of the senate and one public member appointed by the lieutenant governor; and

(2) two members of the house of representatives and one public member appointed by the speaker of the house of representatives.

(b) A member of the committee serves at the pleasure of the appointing official.

(c) The lieutenant governor and the speaker of the house of representatives shall appoint the presiding officer of the committee on an alternating basis. The presiding officer shall serve a two-year term expiring February 1 of each odd-numbered year.

Sec. 242.654. COMMITTEE POWERS AND DUTIES. (a) The committee shall:

(1) meet at the call of the presiding officer;

(2) receive information about rules or standards proposed or adopted by the department; and

(3) review specific recommendations for legislation proposed by the department or the attorney general relating to rules and standards applicable to institutions and other long-term care issues.

(b) The committee may issue process, in accordance with Section 301.024, Government Code, to compel the attendance of witnesses and the production of books, records, documents, and instruments required by the committee.

(c) The committee shall monitor the effectiveness and efficiency of the system for regulating institutions in this state.

(d) The committee may request reports and other information from the department and the attorney general relating to the system for regulating institutions in this state and other issues related to long-term care.

(e) The committee shall use the staff resources of the senate and the house of representatives to assist the committee in performing its duties under this section.

Sec. 242.655. REPORT. (a) The committee shall report to the governor, lieutenant governor, and speaker of the house of representatives not later than November 15 of each even-numbered year.

(b) The report must:

(1) identify significant problems in the system for regulating institutions in this state and contain recommendations for action;

(2) include an analysis of the effectiveness and efficiency of the system for regulating institutions in this state, with recommendations for any necessary research;

(3) include an analysis of the continuum of long-term care services available to citizens of this state; and

(4) provide recommendations for legislative action.

Sec. 242.656. RIGHTS OF EMPLOYEES; RETALIATION PROHIBITED. (a) An employee of the department may cooperate with the committee in the performance of its functions.

(b) The department may not suspend or terminate the employment of or take any other adverse personnel action against an employee of the department who cooperates with the committee in good faith.

(c) In this section, "personnel action" has the meaning assigned by Section 554.001, Government Code.

(4) Renumber subsequent sections of the bill accordingly.

#### **Floor Amendment No. 28**

Amend CSSB 190, in Section 242.073(a), Health and Safety Code, as added by SECTION 1.19 of the bill (page 28, line 27, House committee printing), by striking "administrative penalty may be imposed under Section 242.066" and substituting "civil penalty may be imposed under Section 242.065".

#### **Floor Amendment No. 1 on Third Reading**

Amend CSSB 190, on third reading, in Section 242.065(a), Health and Safety Code, as amended by the bill, by striking "\$2,000" and substituting "\$500".

#### **Floor Amendment No. 2 on Third Reading**

Amend CSSB 190 on third reading in Section 242.0021(c), Health and Safety Code, as added by the bill, by striking "such as a lender, secured creditor, or landlord" and substituting "such as an employee, lender, secured creditor, or landlord".

The amendments were read.

Senator Zaffirini moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on SB 190 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Zaffirini, Chair; Moncrief, Nelson, Patterson, and Truan.

#### **HOUSE BILL 1152 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**HB 1152**, Relating to the definition of statutory probate court.

The bill was read second time and was passed to third reading by a viva voce vote.

#### **HOUSE BILL 1152 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1152** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**HB 1152** was read third time and was passed by a viva voce vote.

#### **COMMITTEE SUBSTITUTE**

#### **SENATE BILL 667 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**CSSB 667**, Relating to the creation and administration of a program to assist individuals who are deaf or hard of hearing or who have an impairment of speech to purchase specialized telecommunications devices for telephone service access.

The bill was read second time and was passed to engrossment by a viva voce vote.

#### **COMMITTEE SUBSTITUTE**

#### **SENATE BILL 667 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 667** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CSSB 667** was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **GUESTS PRESENTED**

Senator Sibley was recognized and introduced to the Senate a group of students and chaperones from the Daystar Christian Academy from the Alvord-Decatur area.

The Senate welcomed its guests.

**SENATE BILL 1782 ON SECOND READING**

On motion of Senator Lindsay and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**SB 1782**, Relating to the disposal of dead animal carcasses found on municipal and county roadways.

The bill was read second time.

Senator Lindsay offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **SB 1782** as follows:

Strike all below the enacting clause and substitute the following:

SECTION 1. Subchapter C, Chapter 361, Texas Health and Safety Code, is amended by adding Section 361.116 to read as follows:

Sec. 361.116. DISPOSAL OF CARCASSES OF ANIMALS KILLED ON ROADWAYS. (a) Notwithstanding any other provision of this chapter, counties and municipalities may dispose of the carcasses of animals killed on county or municipal roadways by burying the carcasses on property owned by the entity who is responsible for road maintenance. No permit shall be required to dispose of animal carcasses on county or municipal property. Disposal shall be conducted in a manner consistent with public health.

(b) Notwithstanding any other provision of this chapter, the Texas Department of Transportation may dispose of the carcasses of animals killed on the state highway system by burying the carcasses on state highway right-of-way. No permit shall be required to dispose of animal carcasses on state highway right-of-way. Disposal shall be conducted in a manner consistent with public health.

SECTION 2. This Act takes effect September 1, 1997.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

**SB 1782** as amended was passed to engrossment by a viva voce vote.

**SENATE BILL 1782 ON THIRD READING**

Senator Lindsay moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1782** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SB 1782** was read third time and was passed by a viva voce vote.

(President in Chair)

**COMMITTEE SUBSTITUTE  
SENATE BILL 119 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**CSSB 119**, Relating to the definition of "school" for purposes of enhancing the punishment for certain offenses committed in a drug-free school zone.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 119 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 119** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CSSB 119** was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1387 ON THIRD READING**

On motion of Senator Patterson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

**CSSB 1387**, Relating to benefits for certain roof damage on property insured through the Texas Catastrophe Property Insurance Association.

The bill was read third time and was passed by a viva voce vote.

**(Senator Truan in Chair)**

**BILLS AND RESOLUTION SIGNED**

The Presiding Officer announced the signing of the following enrolled bills and resolution in the presence of the Senate after the captions had been read: **HB 834, HB 1092, HCR 36**

**SENATE BILL 1598 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration at this time:

**SB 1598**, Relating to the use of suitable state property for community gardens and farmers markets for the benefit of low-income and needy families.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Gallegos, Galloway, Harris, Lindsay, Lucio, Luna, Madla, Moncrief, Patterson, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Fraser, Haywood, Nelson, Nixon, Ogden, Shapiro.

Absent: Ratliff.

**SB 1598** was read second time.

Senator Ellis offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **SB 1598** as follows:

(1) In SECTION 1 of the bill, after proposed Section 2310.010, Government Code, (introduced version, between page 4, line 27 and page 5, line 1) insert a new Section 2310.011 to read as follows:

Sec. 2310.011. EXPIRATION. The task force is abolished and this Act expires September 1, 2003.

The committee amendment was read and was adopted by a viva voce vote.

**SB 1598** as amended was passed to engrossment by a viva voce vote.

**RECORD OF VOTES**

Senators Fraser, Haywood, Nelson, Nixon, Ogden, and Shapiro asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**SENATE BILL 1598 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1598** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Gallegos, Galloway, Harris, Lindsay, Lucio, Luna, Madla, Moncrief, Patterson, Ratliff, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Fraser, Haywood, Nelson, Nixon, Ogden, Shapiro.

**SB 1598** was read third time and was passed by the following vote: Yeas 25, Nays 6. (Same as previous roll call)

**COMMITTEE SUBSTITUTE**

**SENATE BILL 1678 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**CSSB 1678**, Relating to certain procedures concerning landlords and tenants of residential real property.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1678 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1678** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CSSB 1678** was read third time and was passed by a viva voce vote.

**SENATE BILL 1639 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**SB 1639**, Relating to a lien for the processing or harvesting of cotton.

The bill was read second time.

**(President in Chair)**

Senator Duncan offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **SB 1639** by making the following changes:

1. Page 1, line 22. After the word, "owner," insert, "and any other person having a lien on the cotton who has given actual notice of that lien to the lienholder under this subsection"

2. Page 1, line 24. Strike the words, "at a public sale," and replace with, "under any procedure authorized by section 9.504 of the Texas Business and Commerce Code."

3. Page 2, line 5. Strike the word, "property," and replace with, "cotton"

4. Page 2, line 5. Strike the word, "public," and replace with, "commercially reasonable"

The committee amendment was read and was adopted by a viva voce vote.

**(Senator Sibley in Chair)**

On motion of Senator Duncan and by unanimous consent, further consideration of **SB 1639** was postponed to a time certain of 11:30 a.m. today.

Question—Shall **SB 1639** as amended be passed to engrossment?

**SENATE BILL 50 ON SECOND READING**

Senator Shapiro asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**SB 50**, Relating to the penalty for driving while a driver's license is invalid.

There was objection.



**(Senator Truan in Chair)**

Senator Shapiro then moved to suspend the regular order of business and take up **SB 50** for consideration at this time.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Luna, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Lucio, Shapleigh, Sibley.

**SB 50** was read second time and was passed to engrossment by the following vote: Yeas 24, Nays 7.

Yeas: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Ellis, Lucio, Luna, Shapleigh, Sibley, Truan.

**SENATE BILL 50 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 50** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Sibley, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Luna, Shapleigh, Truan.

**SB 50** was read third time and was passed by a viva voce vote.

**RECORD OF VOTES**

Senators Barrientos, Shapleigh, and Truan asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE****SENATE BILL 1246 ON SECOND READING**

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**CSSB 1246**, Relating to the establishment of a statewide rural health care system.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend CSSB 1246 as follows:

In Article 20C.04, Subsection (b), (committee printing, page 2, line 2), between "system" and "meet", strike "may" and insert "shall".

The amendment was read and was adopted by a viva voce vote.

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend CSSB 1246 as follows:

In Article 20C.14 (committee printing, page 4, line 31) insert a new subsection (c) to read as follows:

"(1) As a requirement of participation in any state contract, the system must satisfactorily address the qualifications for arranging to provide health care services to beneficiaries of certain governmental health care programs as delineated in the contractor's request for proposal, including:

(i) readiness reviews and adequacy of credentialing, medical management, quality assurance, claims payment, information management, provider and patient education, and complaint and grievance procedures; and

(ii) adequacy of physician and provider networks, including such factors as diversity, geographic accessibility, inclusion of physicians and other providers that have furnished a significant amount of Medicaid or charity care to beneficiaries, and tertiary and subspecialty services;

(2) The system shall be reimbursed by the Medicaid contracting agency as the state-defined capitation rate for each service area in which the system operates.

(3) It is not a condition of participation for the system to accept from the Medicaid contracting agency a capitation rate which is lower than the state-defined capitation rate for each service area in which the system operates."

The amendment was read and was adopted by a viva voce vote.

CSSB 1246 as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1246 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that CSSB 1246 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CSSB 1246 was read third time and was passed by a viva voce vote.

**MESSAGE FROM THE HOUSE**

**HOUSE CHAMBER**

Austin, Texas

Monday, April 28, 1997

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

**THE HOUSE HAS PASSED THE FOLLOWING MEASURES:**

**HCR 59**, In memory of Ottis "Bo" Lewis.

**SJR 19**, Proposing a constitutional amendment relating to the place at which the Supreme Court of Texas sits to transact business.

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

**COMMITTEE SUBSTITUTE**

**SENATE BILL 1017 ON SECOND READING**

On motion of Senator Patterson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**CSSB 1017**, Relating to training for members of appraisal review boards and to the qualifications of the members of appraisal review boards.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE**

**SENATE BILL 1017 ON THIRD READING**

Senator Patterson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1017** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CSSB 1017** was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE**

**SENATE BILL 873 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**CSSB 873**, Relating to the manner in which the testimony of a child who is the victim of or witness to an alleged offense may be taken in certain criminal proceedings.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 873 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 873** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CSSB 873** was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 28 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**CSSB 28**, Relating to the Barton Springs-Edwards Aquifer Conservation District.

The bill was read second time and was passed to engrossment by a viva voce vote.

**RECORD OF VOTES**

Senators Fraser and Haywood asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**COMMITTEE SUBSTITUTE  
SENATE BILL 28 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 28** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Gallegos, Galloway, Harris, Lindsay, Lucio, Luna, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Fraser, Haywood.

**CSSB 28** was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 1748 ON SECOND READING**

Senator Galloway asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**CSSB 1748**, Relating to procedures for accepting certain voters at a polling place.

There was objection.

Senator Galloway then moved to suspend the regular order of business and take up **CSSB 1748** for consideration at this time.

The motion prevailed by the following vote: Yeas 21, Nays 9.

Yeas: Armbrister, Bivins, Brown, Carona, Duncan, Fraser, Galloway, Harris, Haywood, Lindsay, Lucio, Madla, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Sibley, Wentworth, Zaffirini.

Nays: Barrientos, Cain, Ellis, Gallegos, Moncrief, Shapleigh, Truan, West, Whitmire.

Absent: Luna.

**CSSB 1748** was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 1748** as follows:

On line 21, page 1, strike "and" and substitute "or".

The amendment was read.

Senator Galloway moved to table Floor Amendment No. 1.

On motion of Senator Galloway and by unanimous consent, the motion to table Floor Amendment No. 1 was withdrawn.

Question—Shall Floor Amendment No. 1 be adopted?

On motion of Senator West and by unanimous consent, Floor Amendment No. 1 was withdrawn.

On motion of Senator Galloway and by unanimous consent, further consideration of **CSSB 1748** was postponed to a time certain of the conclusion of today's session.

Question—Shall **CSSB 1748** be passed to engrossment?

(President in Chair)

**HOUSE BILL 930 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**HB 930**, Relating to the examination of an applicant for an air conditioning and refrigeration contractor license.

(Senator Haywood in Chair)

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 930 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 930** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**HB 930** was read third time and was passed by a viva voce vote.

**HOUSE BILL 1113 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**HB 1113**, Relating to participation and credit in, contributions to, and benefits and administration of the Texas Municipal Retirement System.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 1113 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1113** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**HB 1113** was read third time and was passed by a viva voce vote.

**HOUSE BILL 1190 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**HB 1190**, Relating to monitoring of water quality in watersheds and river basins.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1190** as follows:

In Section 1, to Section 26.0135, Water Code, add new Subsection (j) to read as follows:

(j) In recovering the costs of water quality management programs under this section from wastewater permit holders, the commission may consolidate any fee assessed against a wastewater permit holder under Subsection (h) of this section with the assessment of a wastewater inspection fee authorized under Section 26.0291 of this chapter. In consolidating these assessments the commission may not recover any

amount for the purposes of this section in excess of the amounts authorized under Subsection (h). The commission shall also ensure that any revenues collected from wastewater permit holders under this section are allocated to meet the purposes of this section.

The committee amendment was read and was adopted by a viva voce vote.

**HB 1190** as amended was passed to third reading by a viva voce vote.

#### **HOUSE BILL 1190 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1190** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**HB 1190** was read third time and was passed by a viva voce vote.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 506 ON SECOND READING**

On motion of Senator Luna and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**CSHB 506**, Relating to a bill of review by a civil court.

The bill was read second time and was passed to third reading by a viva voce vote.

(President in Chair)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 506 ON THIRD READING**

Senator Luna moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 506** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CSHB 506** was read third time and was passed by a viva voce vote.

#### **SENATE BILL 1639 ON SECOND READING**

The Senate resumed consideration of **SB 1639**, the bill having been read second time, amended, and further consideration postponed to a time certain of 11:30 a.m. today.

**SB 1639**, Relating to a lien for the processing or harvesting of cotton.

Question—Shall **SB 1639** as amended be passed to engrossment?

On motion of Senator Duncan and by unanimous consent, further consideration of **SB 1639** was again postponed to a time certain of 10:00 a.m. tomorrow.

Question—Shall **SB 1639** as amended be passed to engrossment?

**COMMITTEE SUBSTITUTE  
SENATE BILL 1748 ON SECOND READING**

The Senate resumed consideration of **CSSB 1748**, the bill having been read second time and postponed to a time certain of the conclusion of today's session.

**CSSB 1748**, Relating to procedures for accepting certain voters at a polling place.

Question—Shall **CSSB 1748** be passed to engrossment?

On motion of Senator Galloway and by unanimous consent, further consideration of **CSSB 1748** was again postponed to a time certain of 10:30 a.m. tomorrow.

Question—Shall **CSSB 1748** be passed to engrossment?

**MEMORIAL RESOLUTIONS**

**SR 590** - by Barrientos: In memory of Marcelo "M. C." Arocha of Austin.

**HCR 59** - (Harris): In memory of Ottis "Bo" Lewis.

**CONGRATULATORY RESOLUTIONS**

**SR 588** - by Ogden: Congratulating the Camino Real Seven Point Charities, Incorporated.

**SR 589** - by Whitmire: Congratulating the City of Houston Parks and Recreation Department and the Sam Houston Area Boy Scouts Council.

**SR 592** - by Lindsay: Congratulating Zachariah Gay of Spring.

**SR 593** - by Barrientos, Ratliff, Sibley: Commending the participants in Austin Smiles.

**SR 594** - by Cain: Congratulating Mae Gilbert.

**SR 595** - by Cain: Congratulating Scott Evan Miller of Rockwall.

**SR 596** - by Barrientos: Congratulating Coach Teri Eubank and the members of the Manor High School Lady Mustangs volleyball team.

**HCR 61** - (Moncrief): Commemorating the 16th anniversary of B&B Publishing, Incorporated.

**HCR 62** - (Moncrief): Commemorating the 125th anniversary of Forest Hill Presbyterian Church in Fort Worth.

**HCR 63** - (Moncrief): Honoring Dr. Raymond W. Barber of Fort Worth.

**HCR 162** - (Armbrister): Commending the South Texas Project.

**MISCELLANEOUS RESOLUTION**

**SR 591** - by Barrientos: Designating the first Sunday in April and the first Sunday in October as Texas Cemetery Visitation Days.



**ADJOURNMENT**

On motion of Senator Truan, the Senate at 12:48 p.m. adjourned, in memory of former Senator Thomas W. Creighton of Mineral Wells and in memory of the life of Ottis "Bo" Lewis of Burkeville, until 10:00 a.m. tomorrow.

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**APPENDIX**

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**COMMITTEE REPORTS**

The following committee reports were received by the Senate:

April 28, 1997

EDUCATION — CSHB 1404

NATURAL RESOURCES — HB 376, HB 16, HB 320, HB 993, HB 1999, HB 3490 (Amended), SB 991, CSSB 1136

FINANCE — CSSB 102, SB 105 (Amended), CSSB 126, CSSB 1183, CSSB 1299, CSSB 1321, SB 1375 (Amended), CSSB 1416, CSSB 1470, SB 1808 (Amended), CSSB 1906, HB 9 (Amended)

EDUCATION — CSSB 1825

HEALTH AND HUMAN SERVICES — CSSB 257, CSSB 775, CSSB 943, CSSB 276, CSSB 1539

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**SENT TO COMPTROLLER**

April 28, 1997

SB 886

**SENT TO SECRETARY OF STATE**

April 28, 1997

SJR 36

**SENT TO GOVERNOR**

April 28, 1997

SB 92, SB 243, SB 388, SB 415, SB 422, SB 553, SCR 72

**In Memory  
of  
Ottis "Bo" Lewis**

Senator Harris offered the following resolution:

**(Senate Resolution 536)**

WHEREAS, The Senate of the State of Texas joins the citizens of Newton County in honoring the memory of and mourning the loss of Ottis "Bo" Lewis, who died April 26, 1996, at the age of 70; and

WHEREAS, Ottis Lewis was born June 4, 1925, in Arden, Arkansas, and moved to East Texas while still a young man; he settled in Burkeville in 1943; and

WHEREAS, A man of many talents and interests, Ottis Lewis began his career as a logging contractor and as the owner of both a car dealership and a service station; and

WHEREAS, He entered public service in 1967 when he was elected county commissioner for Precinct 2 in Newton County; during his tenure, he managed his responsibilities with exceptional dedication and alacrity and became well known for his reliable judgment and superior guidance; his loyal service as county commissioner spanned 24 years; and

WHEREAS, An exemplary and distinguished gentleman, Mr. Lewis was respected for his many accomplishments and was a well-known and beloved leader in his community; and

WHEREAS, He served as secretary of the Burkeville School Board and as a member of the Jasper-Newton Health Board; he was a 32nd-degree Master Mason and a member of Newton Lodge Number 136 in Burkeville; he was president of the Sabine River Authority from 1991 until his death; and

WHEREAS, Ottis Lewis's contributions to his community will be appreciated for years to come, and he will be remembered as a man whose love and sense of humor touched the lives of many; and

WHEREAS, Mr. Lewis's greatest source of joy was his family, and family members cherished his affection and derived strength from his role as a mentor and patriarch; and

WHEREAS, Ottis Lewis was a devoted husband, father, and grandfather who lived his life to the fullest, and he leaves behind memories that will be treasured forever by his family and many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 75th Legislature, hereby pay tribute to the life of Ottis "Bo" Lewis and extend sincere condolences to his bereaved family: his wife, Ethel Lewis; his children, Mike Lewis, Ron Lewis, Edward Droptini, Sharon McMullen, and Brenda Roden; and his grandchildren, Shavonn McMullen Norcross, Jace Roden, Kimberly Lewis, Brian

Lewis, Alec Lewis, Brad Droptini, Shelley Droptini, Jacob Turner, and Taylor Turner; and his great-grandson, Brandon Lewis; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Ottis "Bo" Lewis.

The resolution was read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Harris and by unanimous consent, the resolution was adopted by a rising vote of the Senate.

Senator Harris was recognized and introduced to the Senate Ethel Lewis, widow of Ottis Lewis; children Representative Ron Lewis and his wife, Mike Lewis and his wife, Sharon McMullen, and Brenda Roden; and granddaughter Taylor Turner.

The Senate welcomed the family members of Ottis Lewis and expressed its sympathy.

On motion of Senator Sibley and by unanimous consent, the following remarks were ordered reduced to writing and printed in the *Senate Journal*:

**Senator Harris:** Members, through the years I did not get to know Bo Lewis individually from the standpoint of face-to-face contact between him and myself. But I had the unique pleasure of hearing from him, after almost every weekend when we were in session, through his son Representative Ron Lewis. Ron would come back from being home and he'd had a conversation with his dad. His dad would have instructions on what was best for Texas and what Ron and I should be doing to try to further what was best for Texas. He was a man that, from my experiences with Ron, that political parties had nothing to do with it. What was important was, again, doing what was best. There was more than once where Ron Lewis and I cast votes on the appropriations committee that were very detrimental to Bo Lewis. In fact, it even caused him to have a bitter campaign as a result of one of them. But it was amazing, Mr. Lewis stuck by what his son and I had done on that occasion, even though knowing it would cause some ramifications for him individually in his upcoming campaign. But, again, he felt it was best for Texas. Whenever I look back on the conversations with Ron and the family involvement that Mr. Lewis garnished about him and the way the family participated together in decisions, he was an exceptional man, not only for the

service that he gave his local area, the service he gave Texas through the Sabine River Authority. He was an exceptional man for building a fine and strong, well-knitted, together family and it is a real pleasure for me here today and an honor for me here today to bring this resolution to the floor of the Senate, Mr. President.

**Senator Nixon:** Thank you, Mr. President. I too do rise in support of this resolution. I got to know Mr. Lewis only slightly when I first started to run for office. When you go to the small county of Newton, though, it was sort of amazing. It didn't matter which political party you talked to; they all thought a lot of this man and, I'll tell you, in a small community that tells you an awful lot about someone. I've enjoyed working with his son. Knowing how a son is always a reflection of his father tells you also a lot about that individual. I have also been proud to know that over the years he worked an awful lot for the Sabine River Authority, which in East Texas is important whether you're from Longview, or whether you're all the way down to Orange.